

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.No.2151/99

New Delhi this the 21st day of July, 2000.

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HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

1. Sh. D.C. Katyarmal,
S/o late Sh. Chimansao,
0/2 Blk-II, Sr. Architect,
Minto Road Hostel,
New Delhi.
2. Sh. K.C. Agarwal,
S/o Sh. Laxmi Chand,
R/o Kcndriya Vihar, A B58
Sector 51, Noida.

...Applicants

(By Advocates Sh. Kaushal Vasdev and Sh. Rama Krishna)

-Versus-

Union of India through:

1. The Secretary to the
Government of India,
Ministry of Defence,
South Block,
New Delhi.
2. Engineer in Chief,
Military Engineer Services Department,
Army Headquarters,
Kashmir House,
New Delhi.

...Respondents

(By Advocate Shri D.S. Jagotra)

O R D E R

By Reddy, J.-

The applicants are Senior Architects in the Military Engineering Service (MES) in the grade of Rs.3700-5000. They were initially appointed as Assistant Architects Group 'B'. The next promotion for Assistant Architects Group 'B' as well as Deputy Architects, Group 'A' is Architects Group 'A'. The Assistant Architects are considered for promotion after 8 years while Deputy Architects are considered after 4 years of service. After promotion as

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Architects officers from both the streams are placed in a common seniority list.

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2. Architects are promoted as Senior Architects after completion of a minimum of 5 years of service in that grade. Prior to implementation of Fifth Central Pay Commission's recommendations there were two pay scales for Senior Architects, which are as under:

Senior Architect :Rs.3700-5000

Senior Architect (Selection Grade) :Rs.4500-5700

3. Under the prevailing recruitment rules the selection grade was given after completion of 14 years of service in their respective grades. The Fifth Central Pay Commission made the following recommendations:

"that the NFSG of Rs.4500-5700 should be converted into a single functional scale for Superintending Engineers and the scale of Rs.3700-5000 should instead be the non-functional JAG for Executive Engineers. However, in order to avoid too fast a rate of promotion in certain cadres to this grade, it is further recommended that promotions to the scale of Rs.4500-5700 would be permitted only on completion of 13 years of service in Group 'A'. Although the above recommendation is being made in the context of CPWD engineers, it is clarified that this dispensation will be available to all Engineering Cadres in the Govt."

4. Thus, the scale of Rs.3700-5000 was converted into non-functional Senior Grade (NFSG) and Rs.4500-5700 as Single Functional Scale (SFS). But it

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was permitted only on completion of 13 years of service in Group 'A', thus reducing the earlier period of 14 years to 13 years.

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5. The grievance of the applicants in this OA is that the impugned order, based upon the recommendations of the Fifth Central Pay Commission, ~~is~~ ^{is} illegal and wholly unjust. It was submitted that the initial recruitment in the Architects cadre was made through UPSC at two levels, one is Deputy Architects, Group 'A' and the other is Assistant Architect, Group 'B'. The Deputy Architect has to put in minimum 4 years of service while the Assistant Architects has to put in 8 years of minimum service for being eligible for promotion to the post of Architect. Though both become equal at the level of Architect, however, for the grant of the SFS of Rs.4500-5700, sometimes, junior officers in the cadre of Architects would be getting the SFS whereas the senior officers are left out only on the ground that the Architects who were initially appointed as Deputy Architects, their entire service is counted being in Group 'A' for the purpose of computing 13 years of service for getting the higher grade scale, whereas the Architects who were initially appointed as Assistant Architects, which was a Group 'B' post, their service would be counted only from the time of their recruitment as Architects, thus leaving out 8 years of service in Group 'B'. The applicants, therefore, filed the present OA aggrieved by the order dated 25.3.98, whereby the Fifth Central Pay Commission's recommendations have been accepted by the

Government, giving the merged Single Functional Scale of Rs.14300-18300 to the Senior Architects of MES on completion of 13 years of Group 'A' Service by the individual officer instead of 14 years, which was in vogue earlier. The applicants have prayed for a direction to allow the Single SFS of Rs.14300-18300 on completion of 9 years of service after becoming Architects with all consequential benefits.

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6. It is, however, the case of the respondents that based on the recommendations of the Fifth Central Pay Commission the Government passed the impugned order whereby the 14 years period has been reduced to 13 years to get the upgraded scale. Besides these orders are statutory. The respondents cannot interfere with them or modify the period of service. It is also contended that there is no reasonable classification in favour of the applicants to treat them differently.

7. Having considered the rival contentions we are not persuaded to accept the contentions raised by the learned counsel for the applicants. We may agree that the applicants having been initially appointed as Assistant Architects have served a period of 8 years before becoming Architects and the entire period of their service upto Architect being only in Group 'B' they will lose the benefit of the same for the purpose of completing 13 years of service in Group 'A'. It is also true that this stipulation in fact works to the advantage of the Architects who have been appointed initially as Deputy Architects in Group 'A' Service



itself. Hence, their entire service would be counted for the purpose of getting the higher pay scale as Senior Architects. Thus anomalous situations may have arisen that the Assistant Architects who were seniors in the Junior Architects are denied the higher scale of Rs.14300-18300 whereas their juniors Deputy Architects shown as juniors on their selection to Architects, would be getting the said scale. It is also brought to our notice that in individual cases the Government have exercised the power of relaxation, by granting concession of 4 years of service. It is also shown in the OA how the anomalous situations had arisen, whereas Sh. K.C. Agarwal, serial No.15 being senior to other employees was left out from the benefit of the Single Functional Scale whereas the Junior Architects were allowed the benefit. But it has to be noticed that the Fifth Central Pay Commission has considered all the facets of the anomalous situations that were brought to its notice and the representations made on behalf of the affected employees and made recommendations which have eventually been accepted by the Government. We do not agree with the contention that the applicants, ^{since they were} recruited as Assistant Architects, ^{though} ~~as unequal~~ ^{should} be treated differently. It is argued that the qualifications and method of selection are the same both for Assistant Architects and Deputy Architects. It is true that Degree is the minimum qualification for both and both are selected by UPSC. But the persons of higher competence and merit as evidenced by their performance in the written examination as well as viva-voce in the UPSC examination, ~~they~~ are selected as Deputy

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(6) ^{may be} ~~are~~ ^{but} different ~~and~~ the Architects. The examinations ~~are~~ different ~~and~~ the scales of pay are ~~also~~ higher to Deputy Architects. Hence, both are differently classified. However, the claim of 4 years concession to Assistant Architects for computing 13 years in Group 'A' though appears to be not unreasonable, as they are asking for some weightage to their 8 years of service in Group 'B', but the fact remains that the Fifth Central Pay Commission ^{having} ~~had~~ considered this aspect/their representations ^{and} ~~but~~ rejected them, it is not possible for us to enter into the arena fixing the pay scales and the eligibility for higher scales etc. It must, however, be noticed that the restriction of 15% authorised posts eligible for the SFS has been done away with and all the officers fulfilling eligibility criteria/13 years of service would be granted the said scale.

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8. In suitable cases where anomalous situation was arisen, in view of the clear power of relaxation vested in the Government suitable relaxation will, however, be granted by the Government, but the applicants cannot claim the relief of modifying the rules framed by the Government in this regard.

9. The contention that the recommendations of the Fifth Central Pay Commission, which have been accepted by the Government for "assured career progress scheme" so that every officer recruited at least gets three promotions cannot be violated, is wholly unsustainable. The employee who was recruited

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as Assistant Architect subject to their eligibility condition is entitled to get three promotions. The Assistant Architect will get first promotion as Architect, then Senior Architect thereafter they are eligible for Senior Administrative Grade on completion of 13 years of service. It may be that juniors may steal a march over them, but it cannot be said that there is no scope for three promotions after one is recruited as Assistant Architects. The reliefs claimed by the applicants cannot be granted in the OA.

10. In view of the aforesaid discussion, the OA fails and is accordingly dismissed. No costs.

Shanta
(Smt. Shanta Shastri)

Member (Admnv)

'San.'

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)